Eliason Corporation *and* Sheet Metal Workers' International Association, Local No. 355, AFL-CIO. Case 20-CA-15937

July 6, 1981

DECISION AND ORDER

Upon a charge filed on January 8, 1981, by Sheet Metal Workers' International Association, Local No. 355, AFL-CIO, herein called the Union, and duly served on Eliason Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 20, issued a complaint on February 13, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 17, 1980, following a Board election in Case 20-RC-14957, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about December 22, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, and has refused to furnish it with certain information[2] alleged to be necessary for, and relevant to, the Union's performance of its duties as exclusive bargaining representative, although the Union has requested and is requesting it to do so. On February 24, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On March 5, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment,[3] and the Board thereafter, on March 13, issued an order transferring the proceeding to itself and a Notice To Show Cause why the General Counsel's motion should not be granted. On April 2, Respondent filed an answer to the General Counsel's Motion for Summary Judgment and to the Union's joinder in motion and a brief in opposition to said motion.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and to the General Counsel's Motion for Summary Judgment, Respondent essentially contests the validity of the Union's certification. Thus, while Respondent admits that it has refused to bargain with the Union or to provide it with the requested information, it nevertheless denies having violated the Act, contending rather that because of certain alleged preelection and election misconduct purportedly engaged in by the Union's observer, Roy Hutton, in the underlying representation proceeding, the Union should not have been certified as the collective-bargaining representative of its employees.

A review of the record herein, including the record in Case 20-RC-14957, reveals that pursuant to a Stipulation for Certification Upon Consent Election entered into by Respondent and the Union, and approved by the Regional Director for Region 20 on May 14, 1980, an election was held on June 12, 1980, among Respondent's employees in an appropriate unit.[4] The tally of ballots showed that of approximately 17 eligible voters, 6 cast ballots in favor of, and 3 against, the Union, with 1 nondeterminative challenged ballot remaining. On June 18, 1980, Respondent filed timely objections to the election, alleging, as it does here, that the Union's observer engaged in certain preelection and election misconduct warranting setting aside the election. Following an investigation into Respondent's objections, the Regional Director issued

[1] Official notice is taken of the record in the representation proceeding, Case 20-RC-14957, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] The Union has requested that Respondent provide it with the following information concerning each unit employee: Name, birthdate, date hired, number of employees presently in the unit, job title or name, straight time hourly wage rate for each employee, and number of dependents. It further requests the following information from the payroll statistics: Average hours worked per employee (both straight time and overtime), average hours worked at overtime, average employment cost for overtime, health and welfare, pension, holidays (including the number of holidays and fringe benefits presently received by employees), a copy of their health and welfare plan, and the present hourly wages (rate of pay) for each employee.

[3] The General Counsel's Motion for Summary Judgment was initially based on the mistaken belief that Respondent had failed to file an answer to the complaint. However, having timely received an answer to the complaint, the General Counsel amended her Motion for Summary Judgment, acknowledging receipt of Respondent's answer, but contending that no factual issues exist which would warrant a hearing in this case.

On March 12, the Union filed a Joiner in Motion for Summary Judgment requesting reasonable attorneys' fees on the ground that Respondent's refusal to bargain was "Patently frivolous."

[4] The appropriate unit consists of all production and maintenance employees employed at the Employer's Woodland, California, Easy Swing Door Division, including warehouse employees, shipping and receiving employees and drivers; excluding all office clerical employees, Econo-Cover Division employees, guards and supervisors as defined in the Act.

a Report on Objections recommending that Respondent's objections be overruled in their entirety and that the Union be certified as the exclusive collective-bargaining representative of the employees in the above-described unit. Respondent thereafter filed exceptions to the Regional Director's report and the Board, on December 17, 1980, issued its Decision and Certification of Representative[5] adopting the Regional Director's findings and recommendations and certifying the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit. As noted, Respondent's defenses in the instant case are based on matters previously raised in the underlying representation proceeding which have heretofore been considered and rejected by the Board.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[6]

All issues raised by Respondent in this proceeding, except for the request for information, were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the underlying representation proceeding.[7] Finally, although Respondent denies that the information sought by the Union is necessary to the collective-bargaining process, it is clear that the information requested relates to the employees' names, classifications, benefits, and the like and is presumptively relevant and necessary for the Union to be able to bargain intelligently and to represent adequately the employees.[8] It is clear, based on the pleadings and exhibits, that Respondent is refusing to recognize, to meet, to bargain, and/or to furnish the necessary and relevant information in order to contest the Union's certification. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the General Counsel's Motion for Summary Judgment.[9]

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is a Michigan corporation engaged in the manufacture and sale of all-purpose swinging doors at its Woodland, California, facility. During the past calendar year, a representative period, Respondent had gross receipts in excess of $500,000 and, during the same period, sold and shipped from its Woodland, California, facility goods valued in excess of $50,000 directly to points and places located outside the State of California.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Sheet Metal Workers' International Association, Local No. 355, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees employed at Respondent's Woodland, California, Easy Swing Door Division, including warehouse employees, shipping and receiving employees and drivers; excluding all office clerical employees, Econo-Cover Division employees, guards and supervisors as defined in the Act.

[5] Not found in bound volumes of Board Decisions.

[6] See *Pittsburgh Plate Glass Co.* v. *N.L.R.B.*, 313 U.S. 146, 162 (1941), Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

[7] Respondent contends that the Board's review of the Regional Directors's Report on Objections was defective in that it did not have the entire investigative record before it when it adopted the findings and recommendations contained therein. In support thereof, Respondent, citing *Prestolite Wire Division* v. *N.L.R.B.*, 592 F.2d 302 (6th Cir. 1979), argues that the Board should hold "an evidentiary hearing" on the issues raised by its affirmative defenses. We find no merit to Respondent's contention inasmuch as we disagree with the court's holding in *Prestolite* and have respectfully declined to follow it. See *Southwest Color Printing Corporation*, 247 NLRB 917 (1980). Sec. 3(b) of the Act authorizes the Board to delegate to its regional directors its powers under Sec. 9, and places review of any such delegated action by a regional director within the Board's discretion. We find that it was a proper exercise of our discretion to adopt the regional director's decision in the underlying representation matter inasmuch as Respondent's exceptions, as found by the Board therein, raised no substantial or material issues to warrant a hearing. *Allis Chalmers Corporation*, 252 NLRB 606 (1980).

[8] *Borden, Inc., Borden Chemical Division*, 235 NLRB 982 (1978).

[9] The Union's request for attorneys' fees is hereby denied as we do not find Respondent's defenses to be "patently frivolous." *Heck's Inc.*, 215 NLRB 765 (1974).

2. The certification

On June 12, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 20, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on December 17, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about December 22, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit and to furnish it with information relevant to, and necessary for, the purpose of collective bargaining. Commencing on or about December 22, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and to bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit, and to provide it with that information.

Accordingly, we find that Respondent has, since December 22, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and to furnish it with information which is relevant and necessary for collective bargaining, and that, by such refusals, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement, and to provide the Union, upon request, with information relevant and necessary for collective bargaining.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Eliason Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Sheet Metal Workers' International Association, Local No. 355, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed at Respondent's Woodland, California, Easy Swing Door Division, including warehouse employees, shipping and receiving employees and drivers, but excluding all office clerical employees, Econo-Cover Division employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since December 17, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about December 22, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, and to furnish it, as requested, with information which is relevant and necessary for collective bargaining, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusals to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Eliason Corporation, Woodland, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Sheet Metal Workers' International Association, Local No. 355, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees employed at Respondent's Woodland, California, Easy Swing Door Division, including warehouse employees, shipping and receiving employees and drivers; excluding all office clerical employees, Econo-Cover Division employees, guards and supervisors as defined in the Act.

(b) Refusing to provide to the above-named Union, upon request, information relevant and necessary for the purpose of collective bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement and further provide the Union with the names, date of birth, and date of hire of each unit employee, the number of employees presently in the unit, their job title or name, the straight time hourly wages rate for each unit employee, and their number of dependents. Respondent shall also furnish the Union with the average hours worked per employee (both straight time and overtime), average hours worked at overtime, average employment cost for overtime, information pertaining to its health and welfare and pension benefits, holidays (including the number of holidays and fringe benefits presently received by employees), a copy of their health and welfare plan, the present hourly wages (rate of pay) for each employee, and any other information requested by the Union which is relevant and necessary for the purpose of collective bargaining.

(b) Post at its Woodland, California, facility copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Sheet Metal Workers's International Association, Local No. 355, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below or refuse to provide it with information which is necessary and relevant for purpose of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive repre-

sentative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All production and maintenance employees employed at the Employer's Woodland, California, Easy Swing Door Division, including warehouse employees, shipping and receiving employees and drivers; excluding all office clerical employees, Econo-Cover Division employees, guards and supervisors as defined in the Act.

WE WILL provide to the Union, as requested, the names of each unit employee, their date of birth and date of hire, the number of employees presently in the unit, their job title or name, the straight time hourly wages rate for each unit employee and their number of dependents. WE WILL further provide it with the average number of hours worked per employee (both straight time and overtime), average hours worked at overtime, average employment cost for overtime, information pertaining to the health and welfare and pension benefits, holidays (including the number of holidays and fringe benefits presently received by employees), a copy of our health and welfare plan, the present hourly wages (rate of pay) for each employee, and any other information requested by the Union which is necessary and relevant for the purpose of collective bargaining.

ELIASON CORPORATION